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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,007

Applicant(s)

CRAWLEY ET AL.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-15 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 10, 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/19/03 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not positively state a range of material thickness that is bounded at the upper end to 5 mils.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 15 recites the limitation "the folding axis" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3, 5-7, 9 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson et al., US Patent 6,568,123 B2 (Nelson).

The applied reference has a presumed common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Nelson comprises a substrate having a thickness and flexural modulus satisfying a predetermined criterion and to optimally radiate pressure waves at a prescribed frequency (reference column 8, lines 33-39) and an insect-interactive material supported on the substrate.

Regarding claims 2 and 3, the invention disclosed by Nelson is comprised of a substrate having a thickness and a flexural modulus (as all materials inherently have). Given that a material with given properties was chosen for use with the invention and that

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the thickness and flexural modulus are inherent in a given material, it is therefore disclosed that the material was chosen based on a prescribed criterion between the thickness and the flexural modulus.

Regarding claim 5, Nelson discloses a material for the substrate selected from the group of polyethylene, polypropylene, polyester, polycarbonate, polyvinyl chloride and polystyrene.

Regarding claim 6, Nelson discloses a thickness that satisfies a prescribed criterion (i.e. durability) that is defined by the material selected for the substrate.

Regarding claim 7, Nelson discloses the substrate being a predetermined polymer wherein the predetermined polymer has a range of thickness that satisfy the prescribed criterion.

Regarding claim 9, Nelson discloses the substrate includes a front surface which defines a central insect-interactive zone (reference darkened area in Figure 4) and a peripheral sealing zone (reference light area in Figure 4) which surrounds the interactive zone (in the case of a dotted pattern, column 11, line 66) wherein the interactive material is within the insect-interactive zone.

Regarding claim 12, Nelson discloses the insect-interactive material is sticky (column 9, line 7).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 8 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al., US Patent 6,568,123 B2 (Nelson).

Nelson discloses the invention substantially as claimed including the substrate being polyethylene (column 8, line 34). However, Nelson does not positively state the thickness is about 0.5 mils. It would have been obvious to use a thickness of about 0.5 mils since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 8, Nelson discloses the invention substantially as claimed. However, Nelson does not disclose the polymer is an unfilled homopolymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an unfilled homopolymer as the material disclosed by Nelson, since it has been held to be within the general skill of a worker in the art to select a known material (reference Greenberg, US 4,202,129 for basis of a known material in the art) on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 17-21, Nelson discloses the invention substantially as claimed. However, Nelson does not positively state that the thickness of the substrate is at least about 0.5 mils or has a range of material thickness bounded at the upper end to 5 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thickness of substrate of at least about 0.5 mils and bounded at the upper end of a range to 5 mils, since it has been held that where the general conditions of

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a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson as applied to claim 1 above in view of Stout et al., US Patent 4,411,093 (Stout).

Nelson discloses the invention as claimed including the use of a pesticide as the insect interactive material. However, Nelson does not positively state the use of an oil-based composition (including mineral oil). Stout teaches within the same field of endeavor the use of an oil-based composition as a pesticide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an oil-based composition as the pesticide disclosed by Nelson, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

11. Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

kss

Charles T. Jordan
CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600